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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

v.

JOHN A. JOBST,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

OPINIONS BELOW

The opinion of the district court on remand (J.S. App. A, pp. 1a-4a) is not reported. The earlier opinion of the district court (J.S. App. B, pp. 5a-17a) is reported at 368 F. Supp. 909.

JURISDICTION

The judgment of the district court, reinstating the earlier judgment declaring Sections 202(d)(1)(D) and 202(d)(5) of the Social Security Act unconstitutional as applied to appellee, was entered on July 27, 1976 (J.S. App. E, p. 23a). A notice of appeal to this Court was filed on August 24, 1976 (J.S. App. C, pp. 18a-19a). On October 13, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including November 22, 1976, and on November 15, 1976, he further extended the time to and including December 22, 1976. The jurisdictional statement was filed on the latter date, and probable jurisdiction was noted on February 22, 1977 (App. 17).

QUESTION PRESENTED

Whether Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Social Security Act, which provides that secondary social security benefits received by a disabled dependent child of an insured wage earner shall terminate when the child marries and individual who is not entitled to benefits under the Act, are consistent with the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be • • • deprived of • • • property without due process of law • • •.

Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402, provides in pertinent part:

> (d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits or of an individual who dies a fully or currently insured individual, if such child–
>
> (A) has filed application for child's insurance benefits,
>
> (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and
>
> (C) was dependent upon such individual–
>
> • • • • •
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs–
>
> (D) the month in which such child dies or marries,
>
> • • • • •
>
> (5) In the case of a child who has attained the age of eighteen and who marries–
>
> (A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or
>
> (B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; • • •.
>
> • • • • •
>
> (s)(2) • • • [S]o much of subsection[ ] • • • (d)(5) • • • of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability • • •.

STATEMENT OF THE CASE

I.

On November 28, 1956, John A. Jobst, under authority of 42 U.S.C. §402(d), filed an application for child's insurance benefits based on the earnings record of his father (Tr. 56-58).[1] Plaintiff was awarded benefits by the Social Security Administration to commence January, 1957, on the basis that he had been disabled since birth because of cerebral palsy (Tr. 61).

In October, 1970, Jobst advised the Social Security Administration that he had married Sandra Lee on October 2, 1970 (Tr. 59). Sandra Lee also has cerebral palsy and is permanently and totally disabled (Tr. 36). Sandra Lee was receiving welfare assistance from the Division of Welfare of the State of Missouri but was not entitled to receipt of social security benefits (Tr. 36, 37).

Plaintiff's benefits were terminated as of October, 1970, because of his marriage (Tr. 63). In terminating Jobst's insurance payments the Secretary relied on §202(d) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402(d), as requiring termination of child's insurance payments upon the child's marriage unless the child's spouse is also entitled to social security insurance payments.

Following the Secretary's termination of Jobst's Federal insurance payments, Jobst of necessity applied for and received welfare benefits (partial and total disability) (Appx. 12, para. 2). As of January 1, 1974, Jobst began receiving Federal welfare payments under the Supplemental Security Income program authorized by Congress in 42 U.S.C. (Supp. II, 1972), §1381 *et seq.*, . . ." As of November 1, 1975, Jobst's aggregate Federal insurance benefits would have

[1] "Tr." refers to the record of proceedings before the Social Security Administration relating to the claim of John Jobst for child's insurance benefits.

exceeded his total welfare payments by $5,901.60. (Appx. 15, Para. 23).

II.

As a result of the Secretary's termination of Jobst's child insurance payments, he requested a hearing which was held on September 7, 1971 (Tr. 32, 33-45). The administrative Law Judge reversed the Social Security Administration's initial determination on the basis that "termination on the basis of marriage is arbitrary and without any rational basis, and, therefore, violates the equal protection and due process clauses of the Constitution." (Tr. 27).

On its own motion the appeals council reviewed the hearing examiner's decision and on June 22, 1972, reversed the Administrative Law Judge's ruling on the basis that a "quasi-judicial federal administrative agency" cannot consider the constitutionality of federal statutes in administering the Social Security Act (Tr. 7).

Plaintiff thereafter commenced this action in United States District Court for the Western District of Missouri to review the Secretary's termination of his benefits. On January 14, 1974, the district court concluded "that 42 U.S.C. §402(d)(1)(D) and §402(d)(5) are violative of principles of equal protection as incorporated in the Fifth Amendment to the Constitution as applied to a beneficiary who marries a totally disabled person who does not likewise receive child's insurance benefits." (J.S. App. A, p. 16a).

The basis of the district court's opinion was that the statute created a constitutionally prohibited "distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits." (J.S. App. B, p. 13a). This discrimination was held to be antithetical to the purpose of secondary benefits in that it effected denial to a beneficiary "who marries a person who cannot provide a source of

support to the beneficiary." (J.S. App. B, p. 14a). The court further held that the constitutionality of the statute could not be sustained on the basis that marriage was a reasonable terminating event under the principal classification intended by Congress–between beneficiaries who marry persons who are entitled to benefits and those who marry persons not entitled to benefits. (J.S. App. B, p. 14a). This was the case because the statutory language created a second classification–that of plaintiff Jobst–which cannot be based upon a rational basis since it was totally unrelated to the dependence of the child insurance recipient on the deceased wage earner.

III.

The Secretary appealed directly to this Court (No. 73-1758). The Secretary argued that Supplemental Security Income for the Aged, Blind and Disabled, Title XVI of the Social Security Act, as added by the Social Security Amendments of 1972, 86 Stat. 1329, 42 U.S.C. Supp. V 1381 et seq., was an intervening legislative pronouncement on the basis of which the district court misinterpreted the purposes of child's insurance benefits under 42 U.S.C. §402(d). This issue was never raised before the lower court (J.S. App. A, p. 2a). On October 15, 1974, this Court vacated the judgment of the district court and remanded the case for reconsideration in light of the Supplemental Security Income program. 419 U.S. 811-812.

Plaintiff and his wife, Sandra, separated in December of 1975 (Appx. 16, Para. 26), following remand of this case to the lower court. As of April, 1977, Jobst was receiving $118.30 per month in Federal welfare benefits (Appx. 13, para. 11). In the event he had continued receipt of child's insurance payments, he would have been entitled to a monthly payment of $183.60 (Appx. 13, para. 13). Jobst and

his wife decided in December of 1976 to dissolve their marriage.[3]

On remand, the district court found and concluded "that all action taken by the Secretary in this case was taken before the effective date of the supplemental security income legislation and that, as was the Secretary's position before this Court at all times until remand, 42 U.S.C. §§1381, *et seq.*, simply had nothing to do with the questions presented (J.S. App. A, p. 3a). The Court entertained the view that the accidental application of SSI payments based on a program enacted subsequent to the child's insurance program simply did not "shed any light on the old Act which would require a reversal of its earlier decision." (J.S. App. A, p. 4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

I.

Under §202(d) of the Social Security Act, the disabled child of an eligible wage earner loses entitlement to child's insurance payments upon marriage unless the disabled child recipient marries an individual who also is eligible for federal insurance payments. Section 202(d) places disabled child's insurance recipients in two classes: (1) those who marry disabled persons also receiving social security benefits, and (2) those who marry non-entitled totally disabled persons. The second class loses its insurance payments without regard to their continuing dependence on the deceased or retired wage earner. This invidious discrimination was held to be constitutionally prohibited as having no rational basis as between the statutory classifications established and the

[3] "Affidavit in Support of Motion to File Motion to Dismiss or Affirm in the Supreme Court of the United States In Forma Pauperis," para. 5.

likelihood of dependency of the disabled child recipient on the insured worker (J.S. App. B, p. 139).

The district court determined that these classifications were "utterly lacking in rational justification," under the current constitutional standards established by this Court in *Flemming v. Nestor*, 363 U.S. at 611. Plaintiff maintains these findings of the lower court should be affirmed as consistent with the teachings of this Court that the permissibility of invidiously discriminatory classifications must be measured against the *actual* Congressional purpose in enacting the concerned insurance scheme. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976); *Weinberger v. Wiesenfield*, 420 U.S. 636, 648 n. 16, and 655; *Jiminez v. Weinberger*, 417 U.S. 628, 634-35 (1974).

The Secretary postulates two major explanations for this discrimination between subclasses under the statute. He urges the classifications created are permissible because marriage as a terminating event for social security payments is consistent with the statutory base. Secondly, it is suggested that Congress in amending §202(d) in 1958, departed from the central purpose of the Social Security Act and property intended only to provide for the social welfare needs of disabled, eligible recipients who marry other eligible recipients.[2a]

These explanations, however, are unrelated to the relevant question presented–that being the impact of the classifications on the dependency of Jobst on the insured wage earner. Congress recognized the inapplicability of marriage as a terminating event as to disabled child recipients who marry other disabled persons receiving federal insurance payments, in 1958. Congress presumptively excluded a subclass of beneficiaries simply because their disabled spouse is not eligible for

[2a] Congress limited the application of the 1958 amendment to disabled child recipients. Congress thereby recognized that dependency of disabled children may be unaffected by marriage. *cf.* 72 Stat. 1030; §§202(d)(1)(D), 202(d)(5) and 202(5)(2) of the Social Security Act.

payments under the Act. Recognition by the Secretary that marriage of a child recipient may normally be a rational terminating event, ignores the impact of the classification created on *disabled* child recipients who likewise have the same continuing dependency on the insured or deceased wage earner.

Congress in 1958 excepted marriage between recipients as a terminating event in part for the purpose of eliminating "the hardship in these cases by providing that marriage would not terminate a person receiving . . . [disability] benefits [when he] marries a person receiving any of these benefits. * * *"[3] Jobst's continuing hardship upon his marriage emanates from the identical base–continuing dependency on the insured wage earner–and in turn insures the proscription of the Fifth Amendment to the classifications created.

The statute's legislative history confirms that the district court correctly concluded the actual and express purpose of Congress in provision of child's disability insurance payments was to benefit both that child and his wage-earning parents by providing a measure of income and security for eligible disabled children who remain dependent on their deceased, disabled or retired parent.[4] Plaintiff relies on the holding of this court in *Mathews v. DeCastro*, ____ U.S. ____, 50 L.Ed. 389, 394 (1976): "The primary objective of the Social Security Act was to provide *workers and their families* with basic protection against hardship created by the loss of earnings due to illness or old age." The child's insurance benefits program, "unlike the public assistance provisions [referring to child's disability benefits as compared to supplemental security income] was not need based and instead was designed to protect against the specific economic hardships created by involuntary, premature retirement." *Id.* at 394, fn. 6 (citations omitted). "[T]he focus of the Social Security Act was specifically on 'adequate protection for [the husband's] family.'" *Id.* at 395.

[3] H.R. Rep. No. 2288, 85th Cong., 2d Sess., p. 18 (1958).

[4] See *infra*, p. 16, 17-19.

Plaintiff also maintains that the decision of the District Court should be affirmed on the basis that Congress established permanent irrebutable presumptions totally at odds with the express congressional purpose of §402(d). Congress thereby made irrelevant Jobst's continuing receipt of child's insurance benefits to his remaining dependency on his father upon his marriage to a person who is herself disabled in a manner precluding support for Jobst.

This discrimination cannot be justified on the basis of a permissible administrative aid promulgated by Congress in order to avoid spurious claims. Plaintiff does not question the propriety of such prophylactic measures as established in *Weinberger v. Salfi*, 422 U.S. 749 (1975). It is instead clear as to the child's insurance program that Congress was unconcerned in provision for child insurance benefits with administrative convenience or avoidance of spurious claims. This is clear from the legislative history wherein it is stated that "[D]etermination of disability generally would not be difficult because of the few cases involved. Most of the cases would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency."[5]

The secretary cannot sustain §402(d) on the basis of such a permissible presumption simply because the classifications are impermissible under the standard set in *Weinberger v. Salfi, supra*. The appropriateness of determination of Jobst's termination must be judged on the basis of "the materiality of the relationship between the statutory classifications and the likelihood of dependency they assertedly affect [which] need not be 'scientifically substantiated.'" *Id.* at 663. This conclusive denial to Jobst of any opportunity to establish the existence of continuing disability is especially pernicious and actually does disservice to the purposes of the child's disability statute. Cf. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976), with *Jiminez v. Weinberger*, 417 U.S. 628, 635 (1974); and *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975).

[5]S. Rep. No. 2133 (June 5, 1956); U.S. Code, Cong. and Adm. News, 1956, p. 3878.

II.

Plaintiff secondly maintains that this Court should affirm the decision of the district court that "the enactment of the Supplemental Security Income program in 42 U.S.C. §§1381, et seq., does not relate to the purposes supporting the congressional enactment of the Child's Insurance Benefits Program, as originally enacted in 42 U.S.C. §402(d)." (U.S. App. B, pp. 3a) The Secretary cannot insist that this Court consider the congressional purpose of child's disability payments "in tandem" with the welfare-based Supplemental Security Income program because to do so would be inconsistent with accepted rules of statutory construction and the respective congressional bases of the programs concerned. In enacting the child's insurance scheme, and the Supplemental Security Income program in 1972, Congress cannot be considered to have proceeded a step at a time in provision for benefits to child's insurance recipients.

The lower court correctly determined the meaning of the statute, seeking always to accomplish its underlying purpose, in accordance with the directives of this Court. *Saltwater Proj. Agr. Dist. v. F.P.C.*, 391 F.2d 470, 474 (D.C. Cir. 1968), cert. denied sub nom, *Ark. Valley G&T, Inc. v. FDC*, 303 U.S. 857 (1969). The enactment of Supplemental Security Income more than a decade following establishment of the child's insurance benefit program manifests the inappropriateness of relating the congressional history of the one insurance scheme to that of the later federal welfare program. *United States v. Southwest Cable Co.*, 392 U.S. 157, 170 (1968), *Fletcher v. Housing Authority of Louisville*, 525 F.2d 532 (6th Cir. 1975).

Plaintiff also demonstrates that there simply is no constitutional relationship as between the congressional purposes of §202(d) and 42 U.S.C. §§1381 et seq. In codifying Supplemental Security Income, Congress intended only to replace "existing federally-aided public assistance programs by new Federal programs for needy families and for

needy aged, blind, or disabled persons."[6] The program Congress chose to utilize remains "need" based, and is antithetical in purpose and intent to the child's insurance payments program. Secondary benefits, on the other hand, were provided so the dependents of American workers could *avoid* the "humiliation" of this same test of need which is central to the purposes of the Supplemental Security Income program.[7]

Nor can the Secretary sustain these classifications on the related basis that they are "not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams,* 397 U.S. 471, 485 (1970). This argument ignores the concomitant constitutional requirement that the classification have some "reasonable basis." *Id.*

Congress can address a problem one step at a time only "so long as this judgment is rational, and not invidious . . ." *Jefferson v. Hackney,* 406 U.S. 536, 546 (1972). The Secretary must thus show that Jobst's termination is related to his dependency upon his father's earnings. The Secretary cannot and has not demonstrated that the classifications created have any rational basis in terms of Jobst's continuing dependency. The Secretary has instead impliedly conceded Jobst's dependency remains unaltered as a result of his marriage.

The invidious discrimination as between statutory classifications is particularly apparent upon comparison of the Secretary's arguments for rationality of the classifications here to recent decisions of this Court where other discriminatory classifications were demonstrated to relate to likelihood of dependency of the recipient. See *Mathews v. DeCastro,* ____ U.S. ____, 50 L.Ed.2d 389 (1976), *Mathews v. Lucas,* ____ U.S. ____, 49 L.Ed.2d 651 (1976), *Weinberger v. Salfi,* 422

[6]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, at 4990.

[7]S. Rep. No. 1669 (May 17, 1950); U.S. Code Cong. & Adm. News, 1950, Vol. II, p. 3288.

U.S. 749 (1975). In these cases the Court held that the constitutional validity of such classifications must be determined by whether there is a rational basis for the difference in the treatment to be accorded to the persons placed in the two classes by the statute or regulation. This is quite a different thing than suggesting that Congress here decided to proceed one step at a time in providing social security benefits to disabled child recipients remaining dependent on the insured worker.

The discrimination as to Jobst resulting from the congressional classifications established is demonstrated by citing substantial existing differences in the statutory and regulatory schemes provided for the two programs. For example, at the time of remand of the case to the district court, the Social Security Administration would have then owed Jobst at least $5,000.00 in back benefits. The Secretary's argument also ignores avoidance of "humiliation" associated with receipt of welfare benefits and perverts the true purpose of the child's insurance program to assure the financial security of a dependent who remains in need of the insured benefits of the worker, regardless of his marriage to another disabled person.

As correctly determined by the district court, the Secretary's argument must fail because Congress cannot ignore the Congressional purpose of the child's insurance benefit program in establishing these classifications. The Secretary's argument must fail because it ignores divergent congressional purposes as between the child's insurance and supplemental security income programs. Social security is intended to provide security for the insured worker and his family, not satisfaction of the needs of welfare recipients as is the case with supplemental security income.

ARGUMENT

I.

THE DISTRICT COURT DID NOT ERR IN HOLDING THAT SECTIONS 202(d)(1)(D) AND 202(d)(5) OF THE SOCIAL SECURITY ACT ARE UNCONSTITUTIONAL AS APPLIED TO CHILD'S INSURANCE RECIPIENTS WHO MARRY OTHER TOTALLY DISABLED PERSONS NOT RECEIVING SOCIAL SECURITY BENEFITS.

The district court held unconstitutional "42 U.S.C. §402(d)(1)(D) and §402(d)(5) as applied to child's insurance beneficiaries who marry *totally* disabled persons who do not receive child's insurance benefits." (J.S. App. B, p. 16a.) Those sections were held to violate the Fifth Amendment on the basis of unjustified arbitrary discrimination between two classes of recipients who marry disabled persons. This invidious discrimination was held to be constitutionally prohibited as having no rational relationship to the dependency of the deceased wage earner under the statutory basis of the Social Security Act. (J.S. App. B, p. 13a).

The lower court concluded it is patently arbitrary discrimination to single out only one subclass who marry persons qualified by the Act as eligible for continued receipt of social security payments without regard to the continuing need of the beneficiary on the earnings of the deceased:

> No rational basis for such a distinction has been suggested nor, we conclude, does one exist. The distinction between the two classes of beneficiaries has absolutely no relevance to the purpose for which the general classifications in the statute were drawn. Indeed, the statutory distinctions are antithetical to that purpose; they result in situations similar to the one here, in which benefits are denied to a beneficiary who marries a person who cannot provide a source of support to the beneficiary. (J.D. App. B, pp. 13a, 14a.)

It is clear from the above that the District Court compared the resulting discrimination between subclasses of beneficiaries to the central legislative purpose of the Social Security Act; that of the relative likelihood of the dependency of the recipient on the deceased wage earner. Moreover, the lower court correctly considered whether a rational basis for the discriminatory classification was demonstrated under the standard established by this Court in *Richardson v. Belcher*, 404 U.S. 78, 81 (1971):

> To characterize an act of Congress as conferring a "public benefit" does not of course, immunize it from scrutiny under the Fifth Amendment. We have held that "the interest of covered employee under the [Social Security] Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." (Citation omitted.)

The Due Process Clause was held "to interpose a bar," on manifestly, "patently arbitrary classification[s], utterly lacking in rational justification." *Flemming v. Nestor*, 363 U.S. 603 (1969) See also *Weinberger v. Salfi*, 422 U.S. 749 (1975) (J.S. App. B, p. 10a).

These findings of the lower court should be affirmed as consistent with the teachings of this Court that the permissibility of invidiously discriminatory classifications must be measured against the *actual* Congressional purpose in enacting the concerned insurance scheme. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651, 662 n. 14 (1976); *Weinberger v. Wiesenfield*, 420 U.S. 636, 648 n. 16, and 655; *Jiminez v. Weinberger*, 417 U.S. 628, 634-35 (1974); cf. *Stanton v. Stanton*, 421 U.S. 7, 14 (1975). When measured against the express purpose in enacting the child's disability insurance scheme, i.e., to afford financial security for persons who have been totally disabled since childhood and who have lost the support of their deceased-insured wage earning parent upon whom they depended, it is manifest that the district Court correctly concluded that the challenged provisions are utterly irrational, overbroad assumptions without justification.

An examination of the legislative history of §202(d) of the Social Security Act discloses the district court correctly understood the purpose of Congress in enacting this scheme of child's insurance benefits. Congress enacted this insurance program for the purpose of providing a measure of income and security for persons continuously disabled since childhood who remain dependent on their wage-earner parents but who have lost that support through the parents' death, disability, or retirement.[8] Correspondingly, Congress was also concerned with assuring insured wage earners that disabled children would be adequately cared for even in the event of the wage earner's loss of income resulting from death, disability or retirement.

The purpose of social security insurance is "to protect workers and their dependents from the risk of loss of income due to the insured's old age, death or disability." *Delmo v. Celebrezze*, 347 F.2d 159, 161 (9th Cir. 1965).[9] Insurance payments were extended to children by §202(d) "to provide at least some measure of income and security to those who have lost a wage earner on whom they depended." *Davis v. Richardson*, 342 F. Supp. 588, 593 (D. Conn. 1972).

It is unalterably clear from the comments of the Senate Finance Committee considering §202(d) in 1956, that the purpose of Congress in enacting the child's insurance program was provision of security for the child remaining dependent on the insured wage earner because of disability:

> The bill includes a provision for payment of disabled child's benefits to the dependent disabled child of a deceased or retired insured worker if the child is permanently and totally disabled and has been so since before he reached age 18. Such children are as dependent on their parents after attaining age 18 as before and therefore the Committee believes it is important to fill this gap in the program by providing benefits for disabled children.[10]

[8] See *infra* at 16, 17-19.

[9] S. Rep. No. 1669, 1950 U.S. Code Cong. & Adm. News, p. 3288.

[10] S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3878.

Congress also sought to reassure the insured worker that his dependent disabled children would receive insurance benefits in the event of the worker's death, disability or retirement:

> Your Committee recognizes the situation faced by people who have the care of a child who because of a mental deficiency never grows up, or who because of a physical impairment requires constant care throughout his life. The suffering of these parents is the more acute because they are constantly concerned about what will happen to the child when the usual family income is cut off by the death or retirement of the wage earner. Under present law, when the father qualifies for monthly benefits upon retirement at age 65 or later, his child can get a benefit equal to one-half of the father's benefit provided the child is under 18. The mother also gets a benefit. Benefits are also payable to the mother and young child when the father dies. In either case, however, benefits which the present law provides for a child stop when he reaches 18, regardless of whether the child continues to be dependent because of mental or physical incapacity. And a child who is over 18 when his father retires or dies cannot get benefits at all.[11]

These purposes of Congress in enacting the child insurance scheme are free from ambiguity. There are no contradictions or *cul de sacs*. Instead Congress provided a child's insurance scheme furthering the purpose of the Social Security program of providing some measure of financial security for insured wage earners and their dependents. This purpose is consistent with and a mere restatement of the underlying Congressional purpose of all social security benefits:

> The purpose of the social security program is to provide a continuing income for a worker and his family when the worker's earnings are cut off by his retirement, old-age, disability, or his death.[12]

In 1965, when Congress extended child's insurance benefits to full-time students up to age 22 who remained dependent

[11] S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3881.

[12] Report of the 1971 Advisory Council on Social Security, H. Doc. 92-80, 92nd Cong., 1st Sess., p. 22 (April 1, 1971).

on a deceased, disabled or retired parent wage earner, the Senate Report reaffirmed the identical statutory purpose:

> Under present law a child beneficiary is considered dependent, and is paid benefits, until he reaches age 18, or after that age if he was disabled before age 18 and is still disabled. The Committee believes that a child over 18 who is attending school full time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefits at age 18. A child who cannot look to a father for support (because the father has died, is disabled, or is retired) is at a disadvantage in completing his education as compared with a child who can look to his father for support.[13]

The purpose of extending these benefits to such children attending college was clearly recognition of their continuing dependence on the insured wage earner, regardless of their age and regardless of their need for payments. Again in 1972, Congress further amended §202(d) inter alia to permit the payment of child's disability benefits when the child's continuous disability has begun before age 22, rather than before age 18. The lack of relationship between the dependency of the child recipient and his age as a terminating event, again was the purpose of Congress in extending these benefits:

> People under age 22 become so seriously disabled that they are prevented from working and generally depend on their parents for their future support. Your Committee believes that it is appropriate and desirable to provide social security benefits for these disabled people after the insured parent dies, becomes disabled or retires.
>
> * * *
>
> Your Committee believes that the present provisions do not provide sufficient protection for many children. There are a significant number of children whose parents are deceased and who are cared for and supported by a

[13]S. Rep. No. 404 (June 30, 1965); U.S. Code Cong. & Adm. News, 1965, p. 2036-2037.

> grandparent. It seems reasonable and equitable to provide benefits for a child in such cases when his grandparent retires, becomes disabled or dies. Your Committee has included in its bill a provision that would accomplish this objective.[14]

That same exclusive congressional purpose behind the child's disability insurance scheme is further reflected in earlier amendments partially removing termination of social security payments upon adoption of such children by relatives and others without termination or reduction of insurance payments. Congress took this action specifically because the adoption was unrelated to the dependency of the child on the deceased wage earner:

> Such adoptions are usually undertaken for the purpose of securing the child the legal and psychological advantages of adoption within a close family group . . . Adoption by such relatives seldom changes the financial conditions under which the child is then living and the prospective loss of benefits as a result of adoption will deter a relative from adopting the child.[15]

It is inescapably clear from this relevant legislative history and the statutory scheme itself that the lower court correctly concluded that the actual and express purpose of Congress in provision of child's disability insurance benefits was to benefit both that child and his wage-earning parents by providing a measure of income and security for children continuously disabled since childhood who are dependent upon their wage-earning parents but have lost that financial support through the parents' death, disability or retirement. As stated by this Court, "the primary objective of the Social Security Act was to provide *workers and their families* with basic protection against hardship created by the loss of earnings due to illness or old age." *Mathews v. DeCastro*, ____ U.S. ____,

[14]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, pp. 5037, 5040.

[15]S. Rep. No. 1862 (July 27, 1946); U.S. Code Cong. & Adm. News, 1946, p. 1540.

50 L.Ed.2d 389 (1976). "Again, the insurance program, unlike the public assistance provisions [referring to child's disability benefits as compared to supplemental security income] was not need based and instead was designed to protect against the specific economic hardships created by involuntary, premature retirement." *Id.* at 394, fn. 6.[16] "[T]he focus of the Social Security Act was specifically on adequate protection for [the husband's] family.' " *Id.* at 395.

It is in light of this actual and express purpose of Congress that the constitutional validity of the challenged provisions were determined by the lower court. (J.S. App. B, p. 13a.) The lower court concluded that the discriminatory treatment of subclasses of eligible recipients under the statute concerned, when measured against the central purpose of Congress, was a patently overbroad and arbitrary classification lacking in rational justification.[17]

The Secretary postulates two alternative explanations for the discrimination between subclasses under the statute. He urges the classifications created are permissible because marriage as a terminating event for social security payments is consistent with the statutory base. Secondly, it is suggested that Congress departed from the central purpose of the Social Security Act in 1958, and properly intended only to provide for the social welfare needs of those recipients who marry other disabled recipients under the Act.

[16]Referring to H.R. Rep. No. 1300, 81st Cong., 1st Sess., C.S.S. 27-28, 53-54 (1949).

[17]The challenged provisions discriminate not only against the child's disability benefits recipient who is in the circumstances of John Jobst, but against the child's wage-earning parent as well. By force of the arbitrary and discriminatory provision, the insured worker loses the assurance that in the event of his own death, disability or retirement his disabled child will be cared for, notwithstanding that it was for that very purpose that over the years social security taxes were deducted from his salary. Cf. *Weinberger v. Wiesenfield,* 420 U.S. 636, 645 and 654-55 (concurring opinion) (1975).

These explanations postulated for the discrimination are unrelated to the relevant question presented–that being the impact of the statutory classifications on the dependency of Jobst on the insured wage earner. As a general premise the Secretary undoubtedly correctly concludes it is reasonable to terminate social security payments to child beneficiaries in the event of marriage. The application however, of that proposition to *disabled* child recipients was removed by Congress in 1958, upon recognizing the inapplicability of marriage as a terminating event as to those recipients who marry other disabled persons receiving federal insurance payments.[18] Congress cannot recognize the irrelevancy of such marriages to dependency of the child on the insured wage earner and likewise arbitrarily, presumptively exclude a subclass of beneficiaries simply because their disabled spouse is not eligible for payments under the Act.

Upon enactment of the child insurance benefits scheme in 1956, Congress required that a disabled child claimant demonstrate that he "was dependent upon such individual– . . ." 42 U.S.C. §402(d)(1)(C). Congress extended these benefits to children of insured workers because of their dependency upon the deceased or disabled insured *worker.* It may be true that in 1958 Congress excepted marriage between recipients as a terminating event for the purpose of eliminating "the hardship in these cases by providing that marriage would not terminate a person receiving any of these benefits. * * *"[19] This purpose is of course consistent with

[18]By terminating the child's disability benefits of a recipient like John Jobst when he marries another disabled person who cannot provide him support or even qualify for social security benefits, the challenged provisions arbitrarily interfere with family relations by selectively penalizing a person based upon his marriage choice. Contrast *Mathews v. Lucas,* ____ U.S. ____, 49 L.Ed.2d 651, 660 n. 8 (1976). This Court has repeatedly recognized that such "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LeFleur,* 414 U.S. 632, 639-40 (1974).

[19]H.R. Rep. No. 2288, 85th Cong., 2d Sess., p. 18 (1958).

the central thrust of the Act of providing security for insured workers and their families. It ignores, however, the hardship of Jobst and similarly situated persons who were subject to the identical hardship as any other recipient remaining eligible under §402(d)(1). That hardship emanates from the identical base—continuing dependency on the insured wage earner—and in turn assures the proscription of the Fifth Amendment to the classifications created.

The Secretary cannot suggest there is a rational basis for the discrimination present by suggesting Congress was concerned only with the marriage between recipients who marry other recipients at the time of the 1958 Amendment. Congress did not abruptly decide to establish a "needs" test as to such persons because "a marriage between individuals both receiving benefits under the Act ordinarily would not result in the elimination or reduction of their need."[20] This argument ignores the impact of the discriminatory classifications established on the subclass of eligible recipients who also endure identical hardships because of their continuing, unabated dependency on the wage credits of the insured worker following their marriage to a totally disabled nonrecipient.

Inferentially, Congress also established permanent irrebuttable presumptions totally at odds with the express congressional purpose of child's insurance benefits. Instead of statutory classifications consistent with the above-described congressional purpose of the child's insurance scheme, Congress had made Jobst's continuing entitlement to social security benefits irrelevant to his remaining dependency on his father upon his marriage to a person who is herself disabled in a manner precluding support for Jobst.

The only justification which could be postulated—that of administrative convenience—is clearly not applicable. Congress may properly establish presumptions or other administrative aids for the purpose of administrative convenience so long as

[20]"Brief for the Appellant," p. 24.

the tests have some relevance to dependency. The purpose of such administrative aids is the avoidance of spurious claims. The propriety of such prophylactic measures was established in *Weinberger v. Salfi*, 422 U.S. 749 (1975), where this Court sustained the constitutionality of the nine-month duration-of-relationship requirement of the Social Security Act in light of an emphatically expressed congressional concern for the need of the provision to avoid spurious claims and serve administrative convenience.

The arbitrary exclusion of Jobst does not relate to any such prophylactic measure. In the case of child's insurance benefits Congress has just as emphatically stated that the statutory purpose in provision for child's insurance benefits was unrelated to any question of administrative convenience or avoidance of spurious claims. Congress made clear both that the entitled class of disabled persons is small and that determination of disability as to this class of recipients was not an administrative burden because of the peculiarly severe and apparent nature of the qualifying event as to such recipients:

> The bill includes provision for payment of disabled child's benefits to the dependent disabled child of a deceased or retired insured worker if the child is permanently and totally disabled and has been so since before he reached age 18. Such children are as dependent on their parents after attaining age 18 as before and therefore the committee believes it is important to fill this gap in the program by providing benefits for disabled children. Your committee does not believe that the serious difficulties in providing cash disability benefits for disabled workers, which are discussed below, apply to the provision of benefits for children disabled prior to page 18. *Determination of disability generally would not be difficult because of the few cases involved. Most of the cases would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency.*[21]

[21]S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3878.

Section 402(d) cannot be justified as a permissible administrative aid comporting with the statutory basis. That section more nearly constitutes a congressionally-imposed statutory presumption of the termination of dependency of a child beneficiary upon marriage to a totally disabled person on the solitary basis of non-receipt of benefits. Cf. *United States Department of Agriculture v. Lula Mae Murry, et al.*, 413 U.S. 508 (1973). Congress cannot utilize such a conclusive presumption where it clearly has determined the statutory basis of such program to relate to the continuing dependency of the child recipient. Congress might properly establish the same presumption as to *childhood* beneficiaries but to relegate a subclass of *disabled childhood* recipients to the vagaries of welfare benefits through a conclusive presumption unrelated to dependency constitutes invidious discrimination.

By operation of the challenged provisions, Jobst, upon his marriage to Sandra, was totally and conclusively denied by the statute any opportunity to avoid termination of his social security payments by showing that he remained dependent upon his deceased father's lost earnings. Further, upon his impending divorce from Sandra, John Jobst is again totally denied by the statute any opportunity to secure restoration of his terminated benefits by showing that he remains dependent upon his deceased father's lost earnings.[22] Such a blanket and conclusive denial to Jobst of any opportunity to establish the existence in his case of the very circumstances which Congress was concerned to provide for is especially pernicious and actually does disservice to the purposes of the child's disability statute. Cf. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976), with *Jiminez v. Weinberger*, 417 U.S. 628, 635 (1974); and *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975).

The Secretary cannot sustain §402(d) on the basis of such a permissible presumption simply because these classifications

[22]The Secretary has adopted this construction of the statutory provisions. Social Security Rulings, 67-33, CB 1967, p. 23.

are impermissible under the standards set in *Weinberger v. Salfi, supra.* The appropriateness of determination of Jobst's payments must be judged on the basis of "the materiality of the relationship between the statutory classifications and the likelihood of dependency they assertedly reflect [which] need not be 'scientifically substantiated.'" *Id.* at 663. But as recognized by defendant, termination of Jobst's benefits is unrelated to his dependency on his father's wage credits.

The inability of defendant to postulate justifications for these classifications is apparent upon examination of *Jiminez v. Weinberger*, where an administrative aid relating to the eligibility of illegitimate children for child's insurance benefits was held to violate the Fifth Amendment because it wholly failed to give such children any opportunity to establish their eligibility as children of the disabled claimant. The lower court had sustained the Secretary's argument that the statutory classification was "rationally related to the legitimate governmental interest of avoiding spurious claims." *Id.* at 630. This Court reversed the trial court because the classifications challenged did not relate to the *dependency* of illegitimate and legitimate children otherwise eligible for insurance benefits:

> Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "overinclusive" in that it benefits some children who are legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent upon their disabled parent. Conversely, the Act is "underinclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both; hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the due process

provision of the Fifth Amendment. *Id.* at 637 (citations omitted).

Nor are the classifications questioned here in any manner analogous to the permissible presumption examined in the later case of *Mathews v. Lucas, supra.* In *Mathews,* the court sustained an alleged discriminatory classification established by the Social Security Act which had the effect of assuring presumptive eligibility of dependent legitimate children of insured workers while requiring illegitimate children of insured workers to establish their dependency on the deceased person's income. The classifications were held to be a proper administrative aid in avoiding spurious claims since they permitted "any otherwise eligible child [to] qualify for survivors benefits by showing a contribution to support, or cohabitation, at the time of death." *Id.*, 49 L.Ed.2d at 665. Section 402(d), on the other hand, provides no similar opportunity to that classification of eligible recipients who marry totally disabled persons unqualified for benefits under the Social Security Act. For this reason the Secretary's argument must fail.

This discrimination effected in terminating benefits and barring re-entitlement to benefits upon death or divorce of the spouse, is irrational in light of this actual purpose of Congress; especially when that discrimination operates through the enactment of a conclusive, irrebuttable presumption, unwarranted in fact. Sections 202(d)(1)(D) and (d)(5) of the Social Security Act must be declared unconstitutional as violative of equal protection principles under the Due Process Clause of the Fifth Amendment. *Weinberger v. Wiesenfield, supra; Jiminez v. Weinberger, supra; U.S. Department of Agriculture v. Moreno,* 413 U.S. 528 (1973); *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 (1973); cf. *Cleveland Board of Education v. LeFleur,* 414 U.S. 632 (1974); *Valandis v. Kline,* 412 U.S. 441 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972).

II.

THE DISTRICT COURT DID NOT ERR IN HOLDING THAT THE ACCIDENTAL APPLICATION OF THE SUPPLEMENTAL SECURITY PROGRAM UPON TERMINATION BY THE SECRETARY OF JOBST'S SOCIAL SECURITY PAYMENTS BEARS NO RELATIONSHIP TO THE CONGRESSIONAL BASIS AND CONSTITUTIONALITY OF SECTION 402(d)(5) OF THE SOCIAL SECURITY ACT.

This Court earlier vacated the Judgment and Order of the district court "for reconsideration in light of 42 U.S.C. (Supp. II 1972), 1381, et seq. . . ." (Appx. 11). Upon proper consideration it was concluded that "the enactment of the Supplemental Security Income program, 42 U.S.C. §§1381, et seq., does not relate to the purposes supporting the congressional enactment of the Child's Insurance Benefits Program, as originally enacted in 42 U.S.C. §402(d)." (J.S. App. A, p. 3a). The lower court concluded that the congressional basis of the Supplemental Security Income program, enacted in 1972, simply was unrelated to the Child's Insurance Payments program codified in excess of a decade earlier.

These conclusions are supported by both the congressional history of the statutes concerned and application of accepted rules of statutory construction. The Secretary's averments to the contrary, first raised before this Court more than two years following provision by Congress for the Supplemental Security Income program, confuse the respective bases of the work-based social security program and welfare-based supplemental security income program. The Secretary cannot insist that the Court must consider the congressional purpose of child's disability payments "in tandem" with the welfare-based supplemental security income program because to do so would be inconsistent with accepted rules of statutory construction and the legislative history of the programs

concerned. The trial court correctly considered the congressional purposes of the work-based social security program as dictating the non-applicability of these suggestions of appellant.

It was the duty of the lower court to determine the meaning of the statute, seeking always to accomplish its underlying purpose. *Saltwater Proj. Agr. Dist. v. F.P.C.*, 391 F.2d 470, 474 (D.C. Cir. 1968), *cert. denied sub nom, Ark. Valley G&T, Inc. v. FDC*, 393 U.S. 857 (1969). This judicial duty of the district court required that it take cognizance of the Social Security Act's legislative history and policy, and assure its implementation:

> The legislative establishment of policy carries significance beyond the particular scope of each of the statutes involved. The policy thus established has become itself a part of our law, to be given its appropriate weight not only in matters of statutory construction but also in those of decisional law. *Morange v. States Marines Lines, Inc.*, 398 U.S. 375, 380-381; see also Note, 82 Yale L.J. 258 (1972).

The lower court correctly decided to give congressional pronouncements relating to 42 U.S.C. §§1381 et seq. little weight in terms of showing a rational basis for the discriminatory statutory classifications established in the child's insurance provision in question. In any event the views of one Congress as to the meaning of a statute enacted by an earlier Congress are to be accorded little weight. *United States v. Southwest Cable Co.*, 392 U.S. 157, 170 (1968)

In terms of the standard to judge such discrimination under the Fifth Amendment it is a misleading and dangerous assumption to equate social security payments with supplemental security income in the manner suggested by appellant.

There simply is no constitutional relationship as between the congressional purposes of §202(d) and 42 U.S.C. §§1381 et seq. In codifying Supplemental Security Income, Congress intended only to replace "existing Federally-aided public assistance programs by new federal programs for needy

families and for needy aged, blind or disabled persons."[23] Congress wanted to establish a Federal "welfare system" because the former state-administered programs had "been moving toward a state of crisis and chaos."[24] The statutory scheme Congress chose to utilize remains "need" based, and is antithetical in purpose and intent to the child's insurance payments program:

> The American people have traditionally been sympathetic and willing to help those who are in need. But your Committee believes that the American people do not want a system which results in promoting welfare as a way of life. Your Committee's deliberations therefore, have been aimed toward providing adequate assistance to those who cannot help themselves, while at the same time creating a system of assistance which will maximize the incentive and the obligation of those who are able to work to help themselves.[25]

Most significantly, the lower court's decision recognizes that

> Social Security is not hardship; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right the individual is eligible to receive his benefits in dignity and self-respect.[26]

Indeed the suggestion of the Secretary that the Court consider the statutory basis of the Supplemental Security Income Program "in tandem" with the child's insurance program is antithetical to the legislative purpose of the secondary benefits program "to provide at least some measure of income and security to those who have lost a wage earner on whom they depended." Secondary benefits were provided

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[23]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, at 4990.

[24]*Id.* at 4990-4991, 5012.

[25]*Id.* at 4990.

[26]102 Cong. Rec. 15110 (19).

so the dependents of American workers could *avoid* the "humiliation" of the same test of need appellant now argues must be satisfied by John Jobst:

> Improvement of the American Social Security System should be in the direction of preventing dependency before it occurs and providing more effective income protection *free from the humiliation of a test of need.* Accordingly . . . the committee recommends action designed to immediately bolster and extend a system of old age and survivor's insurance [speaking of earlier secondary benefits].[27] (Emph. added)

The continuing dependency of the child's insurance recipient who marries a totally disabled person remains unaltered regardless of whether the person he marries also receives social security benefits. Section 402(d) nevertheless places child's insurance recipients in two classes: (1) those who marry disabled persons also receiving social benefits, and (2) those who marry non-entitled totally disabled persons. The second class loses its insurance payments without regard to this continuing dependency.

The Secretary insists these classifications are justifiable and do not offend the constitution because they are "not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams,* 397 U.S. 471, 485 (1970). This argument however ignores the concomitant constitutional requirement that the classification have some "*reasonable basis.*" *Id.*

Citing *Mathews v. DeCastro,* ____ U.S. ____, 50 L.Ed.2d 389 (1976), defendant attempts to build his argument by characterizing Congress' creation of two subclasses of married recipients as merely moving one step at a time to address the problem "which seems most acute to the legislative mind." This argument, however, ignores the fact that a legislature may address a problem one step at a time only "so long as

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[27]S. Rep. No. 1669 (May 17, 1950); U.S. Code Cong. & Adm. News, 1950, Vol. II, p. 3288.

this judgment is rational, and not invidious . . ." *Jefferson v. Hackney,* 406 U.S. 535, 546 (1972). Defendant cannot establish under this argument that Jobst attempts to place "the legislature's efforts to tackle the problems of the poor and the needy . . . to a constitutional straightjacket." *Id.* at 546-547. Discrimination against Jobst simply because of his marriage to a totally disabled non-recipient cannot be justified within the context of continuing dependency upon his father's earnings.

On the other hand, *Mathews v. DeCastro* was decided on the basis of circumstances where there was a "reasonable basis" for the discriminatory classification rooted in the Social Security Act. In the *DeCastro* case the Court sustained a statute which provided benefits to married women whose husbands were retired or disabled if she had a minor child in her care. The statute denies benefits to a divorced woman whose former husband retires or becomes disabled. But this is entirely consistent with the primary objective of the Social Security Act to provide *workers* and their *families* with basic protection against hardships created by the loss of earnings due to illness or old age. "Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married. It could rationally decide that the problems created for divorced women remain less pressing than those faced by women who continue to live with their husbands." *Id.*, 50 L.Ed.2d at 396.

This conclusion is entirely consistent with the "predominant purpose" of old-age and disability insurance:

> The old-age and disability insurance aspects of the social security system do not purport to be general public assistance laws that simply pay monies to those who need it most. That was not the predominate purpose of these benefit provisions when they were enacted or when they were amended. Rather, the primary objective was to provide workers and their families with basic protection against hardships created

by the loss of earnings due to illness or old age." *Id.* at 394.[28]

Moreover, in *Mathews v. DeCastro* the classifications existing merely had the effect of deferring "monthly payments to divorced wives of retired or disabled wage earners until they reached the age of 62." *Id.* at 396. In the case of Jobst the legislative classifications permanently bar his receipt of social security benefits.

The Secretary also contends that this disparity of treatment is justified under analogous observations of this Court in *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972), that a state does not violate the equal protection laws merely because the classification made by its laws are imperfect.

If *Jefferson*, the State provided only 75 percent of the established standard of need to ADC recipients, while paying 100 percent of recognized need to the aged, and 95 percent to the disabled and the blind. But the Court did not uphold this disparity of treatment on the basis of the difference between ADC and the other programs. The Court reached its decision instead by applying the rational basis test of the Equal Protection Clause. Accordingly, the Court held, "We cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational . . . [T]he state may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living . . . [I]t is not irrational for the State to believe that the young are more adaptable than the sick or the elderly, especially because the latter have less hope of improving their situation in the years remaining to them." 406 U.S. at 549.

[28]Citing H.R. Rep. No. 1300, 81st Cong., 1st Sess., 27-28, 53 (1949); Recommendations for Social Security Legislation, Reports of the Advisory Council on Social Security, S. Doc. No. 208, 80th Cong., 2d Sess., 69-70, 95-97 (1949); S. Rep. No. 2133, 84th Cong., 2d Sess., 3-4 (1956); H.R. Rep. No. 1189, 84th Cong., 1st Sess., 3-6 (1955).

In other words, the Court held that the constitutional validity of such classifications must be determined by whether there is a rational basis for the difference in the treatment to be accorded to the persons placed in the two classes by the statute or regulation. This is quite a different thing than suggesting that Congress here decided to proceed one step at a time in providing social security benefits in accordance with the continuing dependency of the insured wage earner's dependent.

By the same token, it can hardly be alleged that it is rational to believe that the childhood recipients are less dependent because they marry people who are totally disabled who by chance happen to be non-recipients of secondary benefits. As appositely stated with respect to the Equal Protection Clause of the Fourteenth Amendment by Mr. Chief Justice Burger, speaking for the Court in *Reed v. Reed*, 404 U.S. 71, 75 (1971):

> In applying this clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways. (Citations omitted.) The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by statute (or rule) into different classes on the basis of criteria wholly unrelated to the object of that statute. *A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike."* * * *

Moreover, as the Court speaking through Mr. Justice Stewart stated in *Rinaldi v. Yeager*, 384 U.S. 305, 308-310 (1966):

> The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. *McLaughlin v. Florida*, 379 U.S. 184, 189-190. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a

> statute necessarily apply equally to all persons. * * * Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. *But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made."* (Emphasis added.)

As recognized by the District Court, the Secretary's argument must fail because it ignores divergent congressional purposes as between the child's insurance and supplemental security income programs. Social security is intended to provide security for the insured worker and his family, not satisfaction of the needs of welfare recipients as is the case with supplemental security income. This difference in the purposes of Congress in enacting the two statutory schemes is underscored by substantial existing differences in the statutory and regulatory schemes provided for these programs. A childhood disability recipient's monthly income is not reduced because of wages or other earnings as is the case with the SSI recipient (Appx. 14). There is no restriction with respect to the value of assets a child insurance recipient can accumulate (Appx. 15). All income of an SSI recipient above $80 reduces benefit payments by $1 for every $2 received (Appx. 15). The maximum resources an SSI recipient can receive and remain eligible for benefits is $2,250 (Appx. 15). The possession and ownership of real property and liquid resources has no effect on the eligibility of recipients for child's insurance benefits (Appx. 15). Finally, Congress has even discriminated as between level of benefits of the two programs over the last several years (Appx. 13, cf. paras 3, 13).

These important differences in the regulatory schemes of the supplemental security income program as compared to child's insurance benefits also affect the benefits received by Jobst. At the time of the remand of this case to the District Court, the Social Security Administration would have then owed Jobst $9,215.80 in back benefits. The Secretary insists that this level of benefits should be compared on the basis of

aggregate receipt of benefits by Jobst and his former wife, Sandra. This position, applying a standard of need, ignores the fact that even $20 per month could have significant positive impact on the standard of living of a couple with such meager monetary resources. In July of 1976, as a child's insurance recipient Jobst would have received an insurance payment of $183.60, as compared to his monthly SSI award of $118.30. It also ignores avoidance of "humiliation" associated with receipt of welfare benefits. But more importantly, it perverts the true purpose of the child's insurance program to insure the financial security of a dependent who remains in need of the insurance benefits of the worker, regardless of his marriage to another disabled person.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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